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September 26, 2002

Karl D. Gleaves, Esq.
Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
United States Department of Commerce
1305 East West Highway
Room 6111 SSMC4
Silver Spring, MD 20910

Re: Federal Consistency Appeal of Millennium
Pipeline Company, L.P. from an Objection
by the New York Department of State

Dear Mr. Gleaves:

We have received the September 20, 2002 letter from counsel for the City of New York (the "City"), requesting that *amicus* status be conferred upon the City in this proceeding. On behalf of Millennium Pipeline Company, L.P. ("Millennium"), we offer the following response in opposition to the City's request:

1. **The Catskill Aqueduct crossing is not located in New York State's coastal zone.** The City requests *amicus* status to address Millennium's proposed crossing of the Catskill Aqueduct. However, the proposed aqueduct crossing is located far outside of the coastal zone, as shown by the New York Department of State's official map of New York State's coastal zone boundaries, which is enclosed. Because the interest that the City seeks to protect is therefore not within the zone of interests that are protected by the Coastal Zone Management Act ("CZMA"), the City has no legally cognizable interest in this proceeding and thus should not be granted any special rights or status.

2. **The City is not entitled to any greater rights than other interested persons.** The public notice issued by the Department of Commerce on September 9, 2002 (67 Fed. Reg. 47220) invites public comments on Millennium's appeal. The City is thus already entitled to advance any and all arguments it may choose to make, including those set forth in its September 20 letter, even though the proposed aqueduct crossing does not raise any legitimate coastal zone issues. However, the City has failed to justify any entitlement to greater rights than other interested parties, such as the briefing rights that NOAA's regulations limit to "the

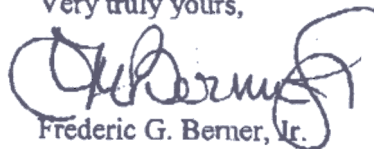
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appellant and the state agency" (15 C.F.R. § 930.127) or other rights that *amicus* status may confer. Otherwise, every potentially affected person would automatically qualify for *amicus* status in a CZMA appeal, resulting in multiple, redundant briefs and comments that would undermine NOAA's objective to "minimize duplicative effort and unnecessary delay" *Id.* § 930.1(c).

3. **The City's concerns have been addressed and resolved.** The Federal Energy Regulatory Commission ("FERC"), which has exclusive jurisdiction regarding the routing of interstate gas pipelines, has addressed and resolved all of the concerns expressed in the City's September 20 letter. Recognizing the potential for damage to the Catskill Aqueduct at the proposed crossing, the FERC has required Millennium to conduct an on-site investigation of the aqueduct and then to develop a site-specific plan for the crossing that would be reviewed by an independent third-party engineering contractor to be chosen and directed by the City's Department of Environmental Protection ("NYCDEP"). FERC's Interim Order (Exhibit 1), 97 FERC ¶ 61,292 at 62,335 & 62,355 (2001). Subsequently, in its final order, the FERC noted that the NYCDEP had revoked the permission it had given Millennium to conduct an on-site investigation of the aqueduct and was thus "not engaging in a cooperative consultation process." Nevertheless, the FERC continued to require Millennium to conduct the detailed engineering studies and to obtain the approval of the crossing plan by the U.S. Army Corps of Engineers, which has been engaged by the NYCDEP to study the proposed crossing. FERC Order issued September 19, 2002 (Exhibit 1A), at 91.

For all of these reasons, Millennium respectfully submits that the City should not be accorded the special *amicus* status that it has requested.

Very truly yours,



Frédéric G. Berner, Jr.

Attorney for Millennium
Pipeline Company, L.P.

cc: Mark P. McIntyre
Glen T. Breuning
William L. Sharp